Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

October Term, 1996

Lawrence Wm. Jordan,

Petitioner

v.

The Governing Board of the Marin Community College District

On Petition For Writ of Certiorari To The Supreme Court of California

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW.

1. Where the Teacher Tenure Law for Community College tenured faculty states as prerequisites an evaluation "which considered the events for which dismissal or penalties may be imposed" and the recommendation of the college president, is it a denial of due process guaranteed under the Fourteenth Amendment to dismiss a tenured faculty in the absence of such evaluation?

2. Is an evaluation of teaching ability "irrelevant" to dismissal of a tenured faculty on the ground of "unfit for service"?

3. When a faculty member runs for district board, and during the election campaign the college president tells the press that said faculty member is guilty of sexual harassment without any neutral party determination or hearing, has said matter become a matter of public interest such that the faculty member's acts and conduct are protected by the First Amendment?

4. May a governing board of a community college district discipline a faculty member for acts committed outside the academic year, off district property, not involving a district program or activity, or evidencing moral turpitude?

5. Is a tenured faculty member, possessing a property and liberty interest in continuation of his public employment, denied due process when judicial review is limited to the "substantial evidence" standard?

6. Is a tenured faculty member, subject to dismissal proceedings for alleged sexual harassment of a former temporary faculty member, denied due process of law for failure of the governing board to provide him copies of all documents relied on in support of the decision to dismiss at the time of presentment of the accusation?

7. Where the state faculty tenure law provides that, in a dismissal proceeding, "*** the rights of the parties *** shall include the rights and duties of any party in a civil action brought in a superior court" and the governing board refuses and fails to make discovery to the faculty member accused, is there such a denial of due process and equal protection as to make the proceedings invalid?

8. Where a state has adopted a comprehensive statutory and regulatory scheme to deal with discrimination, including sexual harassment, in public educational institutions, which mandatory

scheme includes:

Promulgation of applicable state statutes and regulations by local districts;

Annual written notification of faculty and staff at the commencement of the academic year of the rules and regulations;

A statute of limitations;

A requirement for a written complaint;

A requirement for designation of a "responsible district officer" to handle complaints;

A specified form for the complaint;

A requirement for establishment of local informal resolution procedures as a prerequisite to filing a complaint;

A mandatory notification of the community college state chancellor of the filing of any complaint

A mandatory "impartial fact-finding investigation of that complaint" with notification to the complainant and Chancellor;

Preparation of a written report to include "at least all of the following":

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness;

c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether discrimination did or did not occur; and

(e) any other information deemed appropriate by the district;

A written administrative determination;

A proposed resolution;

A notice of right to appeal by the complainant to the district governing board and the Chancellor;

Notification to the complainant of other civil remedies (in cases involving employment discrimination the right to file a complaint with the Department of Fair Employment and Housing);

And a final report to the Chancellor;

none of which was alleged or proven by the district, is a finding of sexual harassment and dismissal not per se a violation of due process and equal protection cognizable under the Fourteenth Amendment?

9. Is dismissal of a tenured faculty member for mailing a commercial innocuous birthday card to a temporary former faculty member at her home once per year without any complaint and without any evidence from peers or students as

to the faculty member's classroom knowledge, abilities, skills, and effectiveness so arbitrary as to be invalid under the due process clause of the Fourteenth Amendment?

10. Where state law mandates annual notice to students, staff, and faculty of the nature of discrimination laws in educational institutions, the method of filing complaints and their investigation, and sets a time limit of one year from the event for filing a written complaint; and the statute states the purpose is to provide "notification"; and the governing board fails to promulgate or furnish copies of such statute and regulations, is imposition of punishment for alleged violation of such provisions without notice a violation of due process and equal protection?

11. Can a tenured community college faculty be dismissed for allegedly violating Title VII or Title IX because the collective bargaining agreement between the community college district and its faculty union contains language stating that sexual harassment is unprofessional conduct?

12. If the alleged victim of sexual harassment denies under oath any impairment of her teaching, and the district offers no evaluations or other evidence otherwise, and no evidence is introduced from other faculty or students, can there be environmental sexual harassment as a matter of law?

13. May a tenured faculty member be punished by his employer district for acts committed outside the academic year, off district property, and not during a program or activity sponsored by the employer?

14. Is refusal to furnish documents relevant to an accusation, claims of attorney-client privilege on behalf of a non client, and refusal to make discovery such a denial of due process and equal protection as to warrant reversal of a finding of unfit for service?

15. Does citation or reference to matters outside the statute of limitations or other bar to introduction, even though claimed "only as background material" violate due process and equal protection by contaminating the tribunals conclusions and findings and leaving the party adversely affected without recourse to correct or rebut?

16.Where the state Supreme Ct has declared that no cause of action lies under Govt.C. § 12940 [state version of Title VII, 42 USC § 2000e) without exhaustion of administrative remedies under the FEHA [Fair Employment and Housing Act], can

petitioner be found guilty of violation of Govt.C. § 12940 without the district or alleged complainant having first filed a complaint with FEHA without violation of due process and equal protection?

## PARTIES

Lawrence Wm. Jordan, accused and petitioner.
Governing Board, accuser and respondent.
Stewart Judson, administrative law judge. [ALJ]

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| Morrison v. State Board of Education (1969) 1 Cal.3d 214; 82 Cal.Rptr. 175, 461 P.2d 375 | 19 |
| Skelly v. State Personnel Bd. (1975) 15 C.3d 194; 124 Cal.Rptr. 14, 539 P.2d 774 | 20 |
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## CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED

ALJ Decision in In the Matter of Lawrence Wm. Jordan a Regular Academic Employee , OAH 9411146 dated June 7, 1995.

Writ of Mandate proceedings in Sacramento Superior Ct., Lawrence Jordan v. David Mertes , No. 95CS02134 and 95CS02135. (1995)

LAWRENCE WM. JORDAN v. GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT, Marin Superior Ct. No. 162915 (1995)

No. 162915 Show Cause Order dated Jan 31 1995. [CT 24]

No. 162915 Order taking Show Cause off Calendar dated February 16, 1995. [CT 27]

LAWRENCE WM. JORDAN v. STEWART A. JUDSON and THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT, Marin County Superior Ct. No. 164356, Decision on Petition for Writ of Mandate filed Nov 6, 1995.

Unpublished Opinion of First Appellate District, Division One,Court of Appeals, No. A072322, LAWRENCE W. JORDAN v. GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DIST., filed June 23, 1996.

Order Denying Reconsideration filed July 19,1996.

Order Extending Time Granting or Denying Review, filed by Supreme Court Sep 20, 1996.

Petition for review DENIED by Supreme Court filed Oct 02, 1996

## BASIS OF JURISDICTION

The Order Denying Writ of Review was entered on October 02, 1996 by the California Supreme Court.

The statutory provision believed to confer jurisdiction on this court is 28 USC § 1257(a) to review the final judgment of the court of last resort of a state.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

U. S. Constitution, Art IV, Sec 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

U. S. Constitution, First Amendment: "Congress shall make no law *** abridging the freedom of speech; ***."

U. S. Constitution, Fifth Amendment: "No person shall *** be deprived of life, liberty, or property without due process of law; ***."

U. S. Constitution, Fourteenth Amendment, Sec. 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
California Education Code [Ed.C.] § 200.

Ed.C. § 210:

Ed.C. § 212

Ed.C. § 212.5

Ed.C. § 212.6:

Ed.C. § 220

Ed.C. § 230

Ed.C. § 232:

Ed.C. § 251:

Ed.C. § 261:

Ed.C. § 262.3:

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Ed.C. § 70902:

Ed.C. § 76034:

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Ed.C. § 87484

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Ed.C. § 87620

Ed.C. § 87622:

Ed.C. § 87660:

Ed.C. § 87661

Ed.C. § 87663:

Ed.C. § 87664

Ed.C. § 87666

Ed.C. § 87667:

Ed.C. § 87669:

Ed.C. § 87671

Ed.C. 87672:

Ed.C. § 87673:

Ed.C. § 87678:

Ed.C. § 87679:

Ed.C. § 87680

Ed.C. § 87682:

Code of Civil Procedure [C.C.P.] § 1094.5

C.C.P. § 2016

C.C.P. § 2017

C.C.P. § 2019

C.C.P. § 2024.

C.C.P. § 2030.

Govt.C. § 811.6:

Govt.C. § 3543.2

Govt.C. § 11503

California Rules of Court [CRC] 317(A)

CRC 319 (a)

California Code of Regulations [CCR] title 5 § 59300:

CCR tit. 5 § 59303

CCR tit 5 § 59304:

CCR tit. 5 § 59307:

CCR tit. 5 § 59320

CCR tit. 5 § 59322

CCR tit. 5 § 59324

CCR tit. 5 § 59324

CCR tit. 5 § 59326:

CCR tit. 5 § 59328

CCR tit. 5 § 59330:

CCR tit. 5 § 59332:

CCR tit. 5 § 59338:

CCR tit. 5 § 59340

**STATEMENT OF THE CASE**

Petitioner was hired for the 1989-1990 academic year as a replacement engineering professor for a professor on sabbatical leave. During a staff training session that Fall, he met one Janene Gaye Frahm, a part-time speech instructor in her 40s. She agreed to go out and they went to an open house. Petitioner asked her out again, and she agreed, but after several weeks of "telephone tag" she declined. They met again at the staff Christmas dinner dance in December 1989. In June 1990, following the close of the academic year at the end of May, petitioner was offered a full-time tenure track position in engineering, which he accepted.

In late June 1991, petitioner sent Ms. Frahm a birthday card from a trip to New Zealand. She apparently complained to the district's personnel department because the card had been sent to her home address which was unlisted in the phone directory. The college vice-president [not the designated officer] sent a letter of reprimand to plaintiff claiming the sending of the card constituted sexual harassment under the collective b bargaining agreement [CBA] and that a copy of the letter would be placed in petitioner's personnel file. Petitioner sought to file a grievance through his union, but the union declined to pursue it on the grounds such materials would be removed after three years and were confidential anyway.

In the Fall of 1991, petitioner became a candidate for the governing board. During the election campaign, the college president told the press that petitioner had been found guilty of sexual harassment and such was published. Petitioner sued for invasion of privacy and defamation, but the actions were dismissed on the ground that he was a public figure.

In late June 1992 (Ms. Frahm's birthday is June 27, 1947), petitioner again sent her an innocuous commercial birthday card at home. She again complained to personnel and the vice-president ordered petitioner suspended for 4 days for violation of the CBA provisions which declare sexual harassment to be unprofessional conduct. Petitioner personally grieved the action and demanded an arbitration hearing since the CBA provided that environmental sexual harassment had to be determined by an arbitrator. The district did nothing.

In late June 1993, petitioner sent Ms. Frahm another innocuous birthday card at her home. She again complained to personnel, apparently of invasion of privacy, and the vice-president ordered petitioner suspended 10 days for violation of the CBA. Petitioner again grieved, demanded arbitration, and again nothing was

done by the district. Petitioner sued for a Writ of Mandate [No. 158373] to compel restoration of money and emoluments and to force the district to arbitrate.

In the Spring of 1991 the district had solicited applications for Teaching Resource Center Coordinator, a one year extra assignment [Ed.C. § 87484], in a foundation-funded center to provide faculty access to computers, scanners, video projectors and the like for preparation of special teaching materials. In January 1992 the vice-president again decided that petitioner was not performing to her satisfaction and ordered payroll to not pay petitioner for the Spring semester, to withhold a sum equal to the overload paid in the Fall semester, and to withhold a $4500 penalty, which was done. Again petitioner sued. [Municipal court V92-1909,]

In December 1993 the defendant governing board filed for an injunction to keep petitioner away from Ms. Frahm's office [which she did not have as a part time hire and whose location was not stated in the complaint] and to keep petitioner from sending her birthday cards or correspondence. Petitioner demurred for failure to state an injury to the governing board and for not being the real party in interest.

In January 1994 the superior court found that petitioner's suspensions for "sexual harassment" were illegal and that only the governing board had the power to punish faculty. In June the complaint for injunction was dismissed for failure to state a claim. In June petitioner sent another card to Ms. Frahm since no arbitration had been conducted, although the district had said it would. In September 1994 the district governing board, on the recommendation of the president, but without evaluation, gave notice of intention to dismiss petitioner for:

> 1. "Evident unfitness for service (Ed.C. § 87732(e)); and
> 2. "Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community college or by the governing board (Ed.C. § 87732(g))." [CT pp 42-44 for court of appeal]

The Resolution of Dismissal [CT 45] is based only on the recommendation of the president.

Petitioner filed his Notice of Objection and Demand for Hearing. [CT 47-51] Included were claims of First Amendment rights [CT 48-49] and denial of due process by failure to provide statutorily required administrative hearings before imposition of punishment [CT 49 ¶ 4], lack of specificity [Ed.C. § 87672], and

reliance on the CBA, which is not a regulation.

Under the Education Code [§ 87679, parties to a dismissal proceeding are entitled not just to the discovery available under the APA, but to the discovery available to parties in a civil action in Superior court. Petitioner filed for discovery, citing the relevant sections of C.C.P. in the headings. When no response was forthcoming, petitioner sought sanctions from the Superior court [No. 162915]. The court hearing was set for February 16, 1995. The dismissal hearing had been set for February 21, 1995. Upon appearing in court on February 16 petitioner was notified by the bailiff that the matter had been removed from the calendar as moot. Petitioner had received no discovery. The Civil Discovery Act [Appendix] provides that discovery shall be completed 30 days before trial "as a matter of right". The clerk was ordered to include the discovery court file in the appellate record but there is nothing in the court file to indicate an appearance by respondent, so why the judge held the hearing was moot is a mystery to petitioner. Under local rules, a motion to reconsider a discovery ruling must be made to the same judge, but the judge left for Turkey on February 17 and was unavailable.

At the administrative hearing, petitioner filed a motion to dismiss and a motion to postpone on the grounds of failure to make discovery, time to seek judicial review of the discovery matters, failure to allege facts necessary to the district's case, and because the district changed the place of hearing on February 16. The ALJ refused to postpone and refused to consider any challenges based upon discovery irregularities.

Following the close of the administrative hearing, the ALJ took four months to render his verdict, well beyond the 30 days allowed by law. Govt.C. § 11517(b). In spite of the time spent, the ALJ makes no mention of applicable administrative regulations.

The ALJ rendered his decision to dismiss finding that the CBA was a regulation and included the Unruh Act [C.C. § 51, fair housing]; Ed.C. § 220 [state version of Title IX, 42 U.S.C. § 2000d] and Govt.C. § 12940 [state version of Title VII, 42 U.S.C. § 2000e]. [CT 354 ¶ IX] He made no rulings the statute of limitations, overruled petitioner's claims of laches and collateral estoppel, made no response to the defenses of outside the academic year and off district property, made no ruling or finding on failure to promulgate regulations or lack of evidence that the district's alleged regulations had been approved by the Chancellor, and made no finding or ruling on the absence of a

written complaint in proper form. He was obviously unacquainted with the applicable administrative law. He also failed to note that sexual harassment in employment is vested in the Fair Employment and Housing Administration, not in the hands of employers such as district.

Petitioner filed for a Writ of Administrative Mandate under C.C.P. § 1094.5 and Ed.C. § 87682. While attempting to verify that Board Policy 5.0004 was approved by the Chancellor, as required by CCR tit. 5, § 59322, petitioner was met by silence and resistance from the Chancellor's office and had to file a Writ of Mandate proceeding in Sacramento Superior Court to compel access to public records. [Sacramento Superior Ct. Nos. 95CS02134 and 995CS02135] which revealed that Board Policy 5.0004 had never been submitted or approved; that no investigative report had been filed; and that no copy of any complaint had been filed. Petitioner then amended his petition for writ of mandate. Between the administrative hearing and the ALJ's decision, the Appellate Department of the Marin Superior Court ruled in petitioner's favor and against the district in the TRC case. [No. 160304]

In the trial court, petitioner raised his constitutional right to due process in his Petition for Writ of Mandate [CT 36 ¶ I, ¶ IV; CT 37 ¶ VI, ¶ VII] and in his Second Amended Petition for Writ of Mandate ["without or in excess of jurisdiction" CT 199 ¶ 4a; First amendment CT 200 ¶ iv; CT 203 ¶ xv; due process CT 206 ¶ x; First amendment CT 212 ¶ vi. The trial court took no evidence, weighed no evidence, and did not discuss petitioner's First Amendment claims at all. As to petitioner's due process claims, the court said:

> "The court finds petitioner's position to be persuasive that respondent did not comply fully with all of the intricacies of Title V, various regulations, and certain provisions of the Education Code. If the court is to place form over substance, petitioner might prevail in his technical arguments-
>
> At the trial level, this court finds substance to prevail over form. The lack of technical compliance with all of the provisions of the Education Code and other regulations subsequently ferreted out by petitioner do not give a basis for his writ of mandate. This is especially true when the court considers the particular choice of procedure taken by respondent.
> The court finds that petitioner was afforded due process, was fully aware of the charges and received a fair hearing.

There was substantial evidence to support the charges that justified petitioner's dismissal."

Noting that these are conclusions reached without a trial as mandated by C.C.P. § 1094.5(c) and (e); Ed.C. § 87682, petitioner filed an appeal.

What "choice of procedure" the trial court means is unknown. To petitioner's mind, the state has specified the way sexual harassment claims are to be handled, and what the district did was not the specified procedure.

In the court of appeals, petitioner raised his federal rights to due process and First amendment speech and association in his opening brief [pp. 10-15]
In his reply brief, petitioner again raised the issue of denial of his federal rights under the fourteenth amendment [pp. 1, 3-10, 12].
In his petition for rehearing, petitioner raised the issue of denial of his federal rights under fourteenth amendment and the arbitrariness of the punishment [pp 17-18].
Both the ALJ and the Court of Appeals found petitioner to be guilty of sexual harassment under Govt.C. § 12940.
In his Petition for Writ of Review to the California Supreme Court, petitioner raised the issues of denial of federal rights

**ARGUMENT**

LACK OF DUE PROCESS

Petitioner was a tenured public college faculty. As such he has a property interest in continued employment,, recognized under the 14th Amendment as a liberty interest protected by due process. Board of Regents of State Colleges v. Roth (1972) 408 U.S. 564; 33 L.Ed.2d 548, 92 S.Ct. 2701. Tenured faculty, such as petitioner, have a state-created property interest in continued public employment. Temporary faculty, such as Janene G. Frahm, have no property interest and are terminated annually or by semester and must be rehired. Daniels v. Shasta-Tehama-Trinity J. Community College Dist. (1989) 212 Cal.App.3d 909; 260 Cal.Rptr. 867. The Daniels case also refutes the ALJ's finding that the CBA was a regulation. [CT 63 ¶ XIII]

Janene G. Frahm was not an employee after the summer of 1993. [Adm. Hrg. EX 3; ALJ finding VI (CT 53)]. The Court of Appeal determination that she was employed until the end of calendar 1994 is clearly erroneous, unsubstantiated by anything in the record, and appears designed to escape petitioner's argument that the proceedings were time barred by CCR tit. 5 § 59328(a)(4).

California has held that Government Code section 12940 is analogous to federal title VII (42 U.S.C. § 2000e), and is evaluated under federal law interpreting title VII cases. University of Southern California v. Superior Court (1990) 222 Cal.App.3d 1028, 1035; 272 Cal.Rptr. 264. Title VII liability attaches only to the plaintiff's employer. Garcia v. Elf Atochem North America (5th Cir. 1994) 28 F.3d 446. Title VII liability does not attach to individuals acting in their individual capacity. Garcia fn 2 citing Grant v. Lone Star Co. (5th Cir. 1994) 21 F.3d 649.

In Rojo v. Kliger (1990) 52 Cal.3d 65, 71; 276 Cal.Rptr. 130, 801 P.2d 373, the California Supreme Ct. held that plaintiff's were not barred by the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) from pursuing state law claims, such as tortious discharge in violation of public policy, but they were barred from stating a cause of action under section 12940 "because they did not exhaust their administrative remedies under the Act." Neither Frahm nor respondent district alleged nor offered evidence of having exhausted their administrative remedies under the state Act.

Since petitioner is at most a co-worker, more correctly an individual acting in his individual capacity and since respondent did not exhaust its administrative remedies, if any, petitioner was denied due process of law under the fourteenth amendment.

Under the Administrative Mandate procedure for reviewing administrative decisions, C.C.P. § 1094.5, the trial court was required to reverse if the respondents had not proceeded in the manner provided by law. This is nothing but another way of saying without due process of law. Ed.C. § 87682 specifically requires the reviewing court "shall exercise its independent judgment on the evidence" and C.C.P. § 1094.5(c) requires:

> "**** in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." [emphasis added]

The trial court's decision [CT 387] is totally devoid of any indication that it weighed the evidence. It does not indicate what kind of evidence it found most reliable, or what testimony it found most credible or incredible. The mandate procedure authorizes the trial court to "hear" the case sitting without a jury [C.C.P. § 1094.5(a)]. It also authorizes the court to admit

evidence improperly excluded and "admit the evidence at the hearing on the writ ***." [C.C.P. § 1094.5(e)] Petitioner petitioned the trial court for redress of his discovery rights which had been ignored, thus not proceeding in the manner provided by law [CT 38], but the trial court did nothing and took no evidence at trial.

Petitioner also raised the defense that the conduct with which he was charged took place outside the academic year and therefor was not subject to discipline. Ed.C. § 87666. In D.T. by M.T. v. Independent School Dist. No. 16 (10th Cir. 1990) 894 F.2d 1176, the court found the district and its executive officers not liable for sexual molestation of some young male students by a basketball coach because the acts took place during the summer school break and off district property. The court noted that the district has no control over teachers outside the academic year. The same should prevail here under principles of equal protection.

That process which was due in this dismissal proceeding included at least the following:

1. Clear and precise notice of the charges;
2. A competent tribunal with authority to adjudicate the claims;
3. A competent ALJ, since dismissal of tenured faculty is a penal act requiring strict adherence to the law, and if criminals can have new hearings based upon inadequate representation by counsel, persons being deprived of their professional careers deserve a competent tribunal;
4. Notice of the applicable statutes and regulations relevant to the matter;
5. Absence of fraud by opposing counsel to mislead the ALJ;
6. Copies of all materials upon which the charges are based to be furnished at the time the accusation is served;
7. A record demonstrating that the tribunal has the authority to adjudicate in the matter since the ALJ derives his/her authority from the governing board and, as a local agency of only granted powers, they must show on the record that they are authorized and are proceeding in the manner specified by the Legislature;
8. Discovery as specified in the statutes.

The Chancellor's regulations on sexual harassment, by statute [Ed.C. §§ 212.6, 232, 261]; and regulation [ CCR tit. 5 §§ 59322, 59326] are to be furnished to each faculty member each year. This was not done, was repeatedly grieved by petitioner, and

thus denied petitioner the notice required by due process and Ed.C. § 212.6(a).

Notice of the chancellor's regulations was not given to petitioner or to the governing board or to the ALJ. Although counsel for the governing board practice under the name "School and College Legal Services", they were either ignorant of mandatory regulations or actively concealed them from petitioner, the ALJ, and the courts.

By statute, Ed.C. § 261, the provisions of Ch. 2 on Sex Discrimination

> "shall be implemented pursuant to existing regulations- and procedures promulgated pursuant to Section 11138 of the Government Code, govern- the filing and handling of written complaints of prohibited discrimination."

This statute dates from 1982. Board Policy 5.0004 was not in existence in 1982 and the board cannot promulgate regulations pursuant to the Government Code because it is not a state agency. The CBA was adopted in 1989, so it cannot qualify as an "existing regulation", nor does it meet the criteria of regulation set forth in Govt.C. § 811.6. [See App.]

Both Ed.C. § 261 and Board of Governors regulation, CCR tit. 5 § 59328, expressly require all complaints of prohibited discrimination to be initiated by the filing of a written complaint. The absence of such written complaint deprives the governing board and ALJ of any legitimate claim to adjudicate sexual harassment.

If a proper sexual harassment complaint is filed, the responsible district officer [never identified in these proceedings], is to conduct an impartial fact-finding investigation [CCR tit. 5 § 59334] leading to a written report and an administrative determination. CCR tit. 5 § 59336. The absence of such report deprived petitioner of due process by denying him access to relevant facts, including witness statements, dates, places, etc

As a local agency possessing only granted powers, the district must proceed in the manner provided by the Legislature or its acts are void. Cowell v. Martin (No authority is given local boards to try faculty, staff or students for sexual harassment. The Chancellor's office

> "shall have the responsibility for monitoring the compliance

of each district with any and all regulations promulgated-
pursuant to Section 11138 of the Government Code."

Not the district. Not the ALJ.

Where statute and/or regulation have prescribed the mode of exercise of a power, the mode is the measure of the power. Ed.C. §§ 87666, 87667, 87671. El Camino Community College District v. Superior Court (1985) 173 Cal.App.3d 606; 219 Cal.Rptr.236. Any other manner of proceeding is arbitrary and therefor a violation of due process.

Under Ed.C. § 220, the prohibition on sexual discrimination extends only to a

"program or activity conducted by an educational institution-
tion which receives or benefits from state financial assistance-
or enrolls students who receive state student financial-
aid."

Since petitioner is not an educational institution and does not enroll students, he, like private educational institutions, may discriminate without running afoul of this section.

For an inferior tribunal, jurisdiction is never assumed, but must be justified on the record. Abelleira v. District Court of Appeal (1941) 17 C.2d 280, 290; Stuck v Board of Medical Examiners (1949) 94 C.A.2d 751; 211 P.2d 389 This was not done. No citation of subject matter jurisdiction is stated or proven. The ALJ apparently assumed he could exercise judicial jurisdiction in an administrative context, but all the cases he cites in his decision with respect to sexual harassment arise out of judicial contexts and not administrative. For such inferior tribunals, all prerequisites must be met to proceed to decide. The essential prerequisites for a community college governing board are found in Ed.C. §§ 87600 and 87660. Reliance on the CBA is per se unlawful since Ed.C. § 87485 expressly denies the governing board (and derivatively the ALJ) any authority to waive by contract any benefits of "this chapter or any part thereof ***." One of the benefits of "this chapter" is that the "grounds set forth in Section 87732 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article. [see Ed.C. § 87663]
(b) The governing board has received all statements of evaluation which considered the events for which dismiss-

dismissal or penalties may be imposed. [It seems self-evident
that an evaluation by peer faculty and students in
Spring 1993 cannot have considered events outside
the academic year or during June 1993 or June 1994.]
(c) The district governing board has received recommend-
recommendations of the superintendent of the district and if the
employee is working for a community college, the recommendations-
of the president of that community college.
(d) The district governing board has considered the state-
of evaluation and the recommendations in a lawful
meeting of the board."

There is no evidence in the record that such an evaluation was performed and thus a prerequisite to dismissal jurisdiction has not been met and the governing board had no jurisdiction to dismiss or penalize petitioner. Due process requires that the tribunal have subject matter jurisdiction. The Court of Appeals opinion states that the board may have considered the 1993 evaluation, but it was favorable, long before the hearing and charges, and the court unconstitutionally shifts the burden of proof to petitioner to show why the 1993 evaluation was admitted.

California has indicated its concern about teachers being subjected to stresses for saying unpopular things. In Koons v. Placer Hills Union Sch. Dist. (1976) 61 C.A.3d 484; 132 Cal.Rptr. 243 it was said that school employees are entitled to have statutory procedures for dismissal strictly followed and fairly considered. The trial court treated this like a land sale gone wrong and thought close was near enough. Not so when it is constitutional facts in the balance.

The ALJ cites the CBA as "incorporating" sexual harassment laws, but the CBA section relied upon relates to "professional conduct". Petitioner was not charged with "unprofessional conduct", Ed.C. § 8772322(a), and due process mandates fair notice of the charges to be met.

Due process also requires a "nexus" between the conduct complained of and a showing that such conduct is detrimental to the public in order to deprive someone from practicing a legal profession. Board of Education v. Jack M. (1977) 19 C.3d 691; 139 Cal.Rptr. 700, 566 P.2d 602. [Solicitation in public restroom to commit homosexual act does not demonstrate an unfitness to teach.

The leading case in California is Morrison v. State Board of Education (1969) 1 C.3d 214; 82 Cal.Rptr. 175, 461 P.2d 375. In that case, also involving homosexual acts by a teacher, the court held that such conduct did not automatically disqualify someone from teaching, but that a "nexus" must be shown between the conduct in question and "unfitness to teach". The conduct must indicate inadequate future classroom performance and a harmful impact on students. The court gave a list of factors to be considered which are recited in petitioner's Statement of Objection to the Accusation [CT 114] and in the ALJ's Decision. [CT 63 et seq.] The California courts have since applied the same criteria to a number of other occupations:

Baker v. State Bar (1989) 49 Cal.3d 804; 263 Cal.Rptr. 798, 781 P.2d 1344.. [Attorney malfeasance due to alcohol and cocaine addiction. Moral turpitude must be given meaning and content relevant to fitness to practice.

Bevli v. Brisco (1985) 165 Cal.App.3d 812; 212 Cal.Rptr. 36. Unfitness to teach charges based on peer evaluations and student complaints. Morrison says look at future classroom performance and the overall impact on students.

Bevli v . Brisco (1989) 211 Cal.App.3d 986; 260 Cal.Rptr. 57. "Morrison" standards must be analyzed in all cases of teacher discharge.

Cartwright v. Board of Chiropractic Examiners (1976) 16 C.3d 762; 129 Cal.Rptr. 462, 548 P.2d 1134. House of prostitution run by chiropractor. Cite Morrison. The power to regulate a profession cannot be used arbitrarily to penalize conduct having no demonstrable bearing upon fitness for its practice.

Accord, In re Kelley (1990) 52 Cal.3d 487; 276 Cal.Rptr. 375, 801 P.2d Attorney with alcohol problem. Offenses that do not involve moral turpitude or affect professional performance should not be the basis for professional discipline simply because they fall short of the highest standards of professional ethics.

The ALJ simply failed to apply the law and evidence to the Morrison tests and arrived at an erroneous decision not supported by facts and contrary to the law. As noted by the court in Fontana Unified School Dist. v. Burman (1988) 45 Cal.3d 208; 246 Cal.Rptr. 733, 753 P.2d 689, the Legislature has amended the Ed.C. twice since Morrison was decided and has adopted the Morrison holdings.

In Capitol City Foods, Inc. v. Superior Court (1992) 5 Cal.App.4th 1042; 7 Cal.Rptr.2d 418, a teenage worker at a hamburger restaurant was raped by her supervisor after

accompanying him to his home after a date made at work. She sued under Govt.C. § 12940. The court stated that respondeat superior is an element of a prima facie case of environmental sexual harassment. The acts complained of must happen in the workplace or in a work-related context. A nexus must be demonstrated showing the conduct was in some fashion work-related. Things done for personal reasons are not within the statutory prohibition.

California courts have held that administrative due process requires that the accused be furnished documents upon which the accusation is based with the accusation. Skelly v. State Personnel Bd. (1975) 15 C.3d 194; 124 Cal.Rptr. 14, 539 P2d 774. Also, the agency must show an adverse effect on the public of retention of the employee. Citing Arnett v. Kennedy (1974) 416 U.S. 134; 40 L.Ed.2d 15, 94 S.Ct. 1633. Accord, Pipkin v Board of Supervisors (1978) 82 Cal.App.3d 652; 147 Cal.Rptr. 502.
Unfitness to teach must be proven by evidence, usually testimonial by experts in education. West Valley-Mission Community College Dist. v. Concepcion (1993) 16 Cal.App.4th 1776; 21 Cal.Rptr.2d 5; Comings v. State Bd. of Education (1972) 23 C.A.3d 94, 104; 100 Cal.Rptr. 73. The ALJ's decision is unsupported by any evidence relating to teaching--no faculty, no students. There is also no evidence that Janene Frahm is a reasonable woman. Again, testimony of peers and students, and evaluations are necessary. The failure of the district to introduce her evaluations must be taken as evidence they do not show any adverse effect on her job performance.

The ALJ cites [CT 56 ¶ XIX] "She observed him staring at her during meetings which made her feel uncomfortable." Staring at someone in a public place is not sexual harassment. Bougher v. University of Pittsburgh (3rd Cir. 1989) 882 F.2d 74. The Bougher court also indicated that if the proceeding before it were from an administrative hearing, it would adopt the administrative statute of limitations.

Downes v. F.A.A. (D.C. Cir. 1985) 775 F.2d 288 says when an agency brings a charge of sexual harassment against one of its employees, it is held to the same standard as an individual and part of its case is to develop the record. The district did not show that state regulations had been promulgated, that petitioner knew of said regulations, that faculty and staff and students knew where and how to report incidents, that district followed the applicable law and arrived at its decision as a result of impartial investigation and evaluation of petitioner's classroom conduct. How did petitioner's mailing of the cards relate to his

fitness to teach?

The ALJ dismissed petitioner's claim of violation of his First Amendment rights out of hand. But the district made the issue of petitioner's sexual harassment of Ms. Frahm one of public interest by unauthorized release of confidential material from his personnel file. Thus the standard for regulating his speech is much stricter. Since none of it took place on district property or during the academic year, district had no legitimate interest in trying to regulate of prevent it. The cards and subsequent demand for arbitration were political speech to move the district's failure to follow its own alleged rules or the state rules into the consciousness of the faculty and students.

Since the district refused to distribute regulations as required by statute; refused arbitration; refused to alter its conduct after several lawsuits it lost; petitioner was left with little else to force the district to comply. But he didn't count on concealment by the district's attorneys, ignorance of administrative law by the ALJ, and bias by the Chancellor's office in refusing public records or pursuing its own monitoring duties.

## BASIS FOR JURISDICTION IN THIS COURT

28 USC § 1257 to review the final judgment of the court of last resort of a state--the denial of a Writ of Review dated October 02, 1996 by the California Supreme Court.

## APPENDIX

### CONSTITUTIONAL PROVISIONS

U. S. Constitution, Art IV, Sec 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

U. S. Constitution, First Amendment: "Congress shall make no law *** abridging the freedom of speech; ***."

U. S. Constitution, Fifth Amendment: "No person shall *** be deprived of life, liberty, or property without due process of law; ***."

U. S. Constitution, Fourteenth Amendment, Sec. 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

California Education Code [Ed.C.] § 200. It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

Ed.C. § 210: For purposes of this chapter, "educational institution" means a public or private preschool elementary, or secondary school or institution; a public or private institution of vocational, professional, or postsecondary education; the governing board of a school district; the governing board of a community college district; the Regents of the University of California; the Trustees of the California State University, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

Ed.C. § 212: For purposes of this chapter, "sex" means the biological condition or quality of being a male or female human being.

Ed.C. § 212.5: For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis of any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Ed.C. § 212.6: (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies ***.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Ed.C. § 220: No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

Ed.C. § 230: For purposes of this chapter, harassment and other discrimination on the basis of sex include, but are not limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in any academic, extracurricular, research, occupational training, or other program or activity.

Ed.C. § 232: The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue regulations pursuant to Chapter 3.5 (commencing with Section 11340) and Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, commonly referred to as the

Administrative Procedure Act, to implement the provisions of this chapter.

Ed.C. § 251: A school district or community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

Ed.C. § 261: The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

Ed.C. § 262.3: (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, or the president of a campus of the California State University, pursuant to this article, to the State Department of Education, the Board of Governors of the California Community Colleges, or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall b e advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

Ed.C. § 70900: There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

Ed.C. § 70901: (a) The Board of Governors of the California Community Colleges shall provide leadership and direction to the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and

continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges. *****

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

Ed.C. § 70902: (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

*** (6) Manage and control district property.

Ed.C. § 76034: No student shall be removed, suspended, or expelled unless the conduct for which the student is disciplined is related to college activity or college attendance.

Ed.C. § 81600: The governing board of a community college district shall manage and control school property within its district.

Ed.C. § 87484(a): In the event a regular employee of a community college district has tenure as a full-time regular employee of the district, any assignment or employment of such employee in addition to his or her full-time regular assignment may be terminated by the governing board of the district at any time.

Ed.C. § 87485: Except as provided in Section 87744, any contract or agreement, express or implied, made by any employee to waive the benefits of this chapter [Ch 3 "Employment"] or any part thereof is null and void.

Ed.C. § 87600: The provisions of this article govern the employment of persons by a district to serve in faculty positions and establish certain rights for these employees. Other provisions of the law which govern the employment of community college faculty or establish rights and responsibilities for these persons shall be applied to persons employed by community college districts in a manner consistent with the provisions of this article.

Ed.C. § 87620: The provisions of this article apply to all persons employed as faculty members by a community college district.

Ed.C. § 87622: The employment rights, responsibilities, dismissal, imposition of penalties for persons employed by a community college district in faculty positions shall b e governed by the provisions of Article 2 (commencing with Section 87600), and Article 4 (commencing with Section 87660) of this chapter. The employment of faculty by a community college district shall otherwise be governed as provided by law and in a manner consistent with the provisions of Articles 2 and 4 and with the provisions of this article (hereinafter referred to in this article, collectively, as "this act").

*****

The provisions of this act shall take precedence, for the purposes of community college faculty, over any other act enacted by the Legislature at any session which, explicitly or implicitly would result in a community college faculty being governed by provisions inconsistent with the provisions of this act.

The provisions of this article govern the evaluation of, the dismissal of, and the imposition of penalties on, community college faculty. Other provisions of this code which govern the evaluation of, dismissal of, and the imposition of penalties on, community college faculty shall be applied to persons employed by a community college district in a manner consistent with the provisions of this article.

: (b) "District" means a community college district.

(c) "Regular employee" or "tenured employee" means an employee of a district who is employed in accordance- with subdivision (c) of Section 87608, subdivision- (c) of Section 87608, or Section 87609.

(d) "Academic year" means that period between the first day of a fall semester or quarter and the last day of the following spring semester or quarter.

Ed.C. § 87663: (b) Whenever an evaluation is required of a faculty member by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d)The peer review process shall be on a departmental or divisional basis and shall address the forthcoming demographics of California and the principles of affirmative action. ***

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process. ***

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

Ed.C. § 87664: The governing board of each district, in consultation with the faculty, shall adopt rules and regulations establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its faculty to meet in the performance of their duties. Such procedures and standards shall be uniform for all contract employees of the district with similar general duties and responsibilities and shall be uniform for all regular employees of the district with similar general duties and responsibilities.

Ed.C. § 87666: During the school year, all contract and regular employees are subject to dismissal and the imposition of penalties on the grounds and pursuant to procedures set forth in

this article.

Ed.C. § 87667: A contract or regular employee may be dismissed or penalized for one or more of the grounds set forth in Section 87732.

Ed.C. § 87669: The governing board shall determine whether a contract or regular employee is to be dismissed or penalized. If the employee is to be penalized, the governing board shall determined the nature of those penalties. If the employee is to be dismissed or penalized, the governing board shall determine whether the decision shall be imposed immediately or postponed in accordance with Section 87672.

Ed.C. § 87671: A contract or regular employee may be dismissed or penalized if one or more of the grounds set forth in Section 87732 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article.

(b) The governing board has received all statements of evaluation which considered the events for which dismissal or penalties may be imposed.

(c) The governing board has received recommendations of the superintendent of the district and, if the employee is working for a community college, the recommendations of the president of that community college.

(d) The district governing board has considered the statements of evaluation and the recommendation in a lawful meeting of the board.

Ed.C. 87672: If a governing board decides it intends to dismiss or penalize a contract or regular employee, it shall deliver a written statement, duly signed and verified, to the employee setting forth the complete and precise decision of the governing board and the reasons therefor.
The written statement shall be delivered by serving it personally on the employee or by mailing it by United States registered mail to the employee at his address last known to the district. ***

Ed.C. § 87673: If the employee objects to the decision of the governing board or the reasons therefor on any ground, he shall notify in writing the governing board, the superintendent of the district which employs him, and the president of the college at which he serves of his objection within 30 days of the date of the service of the notice.

Ed.C. § 87678: If within 30 days of the receipt of the notification

by the district governing board, no written confirmation of agreement of the employee and the governing board as to an arbitrator has been submitted to the secretary of the governing board for entry into its records, the governing board shall certify the matter to the Office of Administrative Hearings and request the appointment of an administrative law judge.

Ed.C. § 87679: The administrative law judge shall conduct proceedings in accordance with Chapter 3 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party as in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

Ed.C. § 87680: The administrative law judge shall determine whether there is cause to dismiss or penalize the employee. If he or she finds cause, he or she shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and shall determine whether his or her decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No evidence shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

Ed.C. § 87682: The decision of the arbitrator or administrative law judge, as the case may be, may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by an administrative law judge under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the

same character and matters as to which special precedence is given by law.

Ed.C. § 87732: No regular employee shall be dismissed except for one or more of the following causes:

(a) Immoral or unprofessional conduct.

(b) Any violation of Article 4 (commending with Section 11400) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

(c) Dishonesty.

(d) Incompetency.

(e) Evident unfitness for service.

(f) Physical or mental condition which make him or her unfit to instruct or associate with students.

(g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations proscribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.

(h) Conviction of a felony or of any crime involving moral turpitude.

(i) Conduct specified in Section 1028 of the Government Code.

Code of Civil Procedure [C.C.P.] § 1094.5 [Administrative Mandate]: (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with the respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. ***

(b) The inquiry in such a case shall extend to tne questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of

discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. ***

(e) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ.s Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

C.C.P. § 2016: (a) This article may be cited as the Civil Discovery Act of 1986.
(b) As used in this article:

(1) "Action" includes a civil action and a special proceeding of a civil nature.

(2) "Court" means the trial court in which the action is pending, unless otherwise specified.

(3) "Document" and "writing" mean a writing as defined in Section 250 of the Evidence Code. *****

C.C.P. § 2017: (a) Unless otherwise limited by order of the court in accordance with this article, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim of defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property. *****
(c) The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery

clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion. *****
(d) In any civil action *** alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning the plaintiff's sexual conduct with individuals other than the alleged perpetrator is required to establish specific facts showing good cause for that discovery, and that the matter sought to be discovered is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence. This showing shall be made by noticed motion and shall not be made or considered by the court at an ex parte hearing. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.

C.C.P. § 2019. (a) Any party may obtain discovery by one or more of the following methods:

(1) Oral and written depositions.
(2) Interrogatories to a party.
(3) Inspections of documents, things, and places.
(4) Physical and mental examinations.
(5) Requests for admissions.
(6) Simultaneous exchanges of expert trial witness information.

(b) The court shall restrict the frequency or extent of use of these discovery methods if it determines either of the following:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

(2) The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation. *****
(c) Unless there is a rule of the Judicial Council, or a local court rule or local uniform written policy to the contrary the methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or another method, shall not operate to delay the discovery of any other party. However, on motion and for good cause shown, the court may establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice.

***** (e) *** Section 1013 *** shall be applicable to any *** method *** of discovery or service of a motion for discovery provided for in this article.

C.C.P. § 2024. (a) Except as otherwise provided in this section, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action. As used in this section, discovery is considered completed on the day a response is due or on the day a deposition begins. Except as provided in subdivision (e), a continuance or postponement of the trial date does not operate to reopen discovery proceedings.

C.C.P. § 2030. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by propounding to any other party to the action written interrogatories to be answered under oath.

Govt.C. § 811.6: "Regulation" means a rule, regulation, order or standard, having the force of law, adopted by an employee or agency of the United States or of a public entity vested by constitution, statute, charter or ordinance in such employee or agency to implement, interpret, or make specific the law enforced or administered by the employee or agency.

Govt.C. § 3543.2. (b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

Govt.C. § 11503. A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the

proceeding is to be held. The verification may be on information and belief.

California Rules of Court [CRC] 317.(a) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days, all papers opposing the motion at least five court days, and all reply papers at least two court days before the time appointed for the hearing. *****

CRC 319 (a) Unless otherwise provided by local rule, all papers relating to a law and motion proceeding shall be filed in the clerk's office.

California Code of Regulations [CCR] title 5 § 59300: The purpose of this chapter is to implement the provisions of California Government Code Sections 11135 through 11139.5 as added by Chapter 972 of the Statutes of 1977, to the end that no person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color or physical or mental disability, be unlawfully subject to discrimination under any program or activity that is funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges. [Filed 4-17-81; effective thirtieth day thereafter]

CCR tit. 5 § 59303: The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code Sections 11135 through 11137 to the Chancellor, except as specifically stated in this chapter.

CCR tit 5 § 59304: It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist from their programs and activities and in meeting the requirements of this chapter. Punitive action authorized by this chapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

CCR tit. 5 § 59307: The governing board of each community college district shall ensure that all persons, regardless of their sex, are afforded equal rights and opportunities in programs and activities conducted by colleges in the district. The district shall comply with all requirements of Chapter 2 (commencing with Section 200) of Division 1 of Title 1 of the Education Code, which is commonly referred to as the Sex Equity in Education Act. Complaints alleging sexual harassment or discrimination on

the basis of gender prohibited by that Act shall be filed and investigated pursuant to the procedures set forth in this subchapter.

CCR tit. 5 § 59320: Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, religion, age, sex, color or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints.

CCR tit. 5 § 59322: Each community college district, no later than 90 days from the operative date of this chapter [1981] shall adopt and submit to the Chancellor for approval rules and regulations consistent with this article for investigation and resolution of complaints of unlawful discrimination.

CCR tit. 5 § 59324: Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to Section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations of the complaint.

CCR tit. 5 § 59326: Each community college district shall notify students and employees of the provisions of this chapter.

CCR tit. 5 § 59328: (a) An investigation of alleged unlawful discrimination prohibited by this Subchapter will be initiated by filing a complaint which meets the following requirements:

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity.

(2) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to Section 59324 by the appropriate community college district.

(3) The complaint shall be in a form prescribed by the Chancellor.

(4) The complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(b) Districts shall establish procedures for attempting to resolve charges of unlawful discrimination which shall be a prerequisite to filing a complaint pursuant to this chapter. Such procedures shall be limited to thirty (30) days.

CCR tit. 5 § 59330: Immediately upon receiving a complaint filed in accordance with Section 59328 the district shall notify the Chancellor of the complaint in a form and manner determined by the Chancellor.

CCR tit. 5 § 59332: When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

CCR tit. 5 § 59334: Upon receiving a complaint which is properly filed in accordance with Section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report which shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;
(b) a summary of the testimony provided by each wit-witness, including the complainant and any witnesses identified by the complainant in the complaint;
(c) an analysis of any relevant data or other evidence collected during the course of the investigation;
(d) a specific finding as to whether discrimination did or did not occur with respect to each allegation in the complaint; and
(e) any other information deemed appropriate by the district .

CCR tit. 5 § 59336: Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward all of the following to the complainant:

(a) a copy or summary of the investigative report re required pursuant to Section 59334;
(b) a written notice setting forth:
(1) the determination of the chief executive officer or his/her designee as to whether discrimination did or did not occur with respect to each allegation in the complaint;
(2) a description of actions taken, if any, to prevent similar problems from occurring in the future;
(3) the proposed resolution o the complaint; and

(4) the complainant's right to appeal to the district governing board and the Chancellor pursuant to Section 59338.

CCR tit. 5 § 59338: (a) If the complainant is not satisfied with the results of the administrative determination pursuant to Section 59336, the complainant may, within fifteen (15) days, submit a written appeals to the district governing board. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal. A copy of the final district decision rendered by the governing board shall be forwarded to the complainant and to the Chancellor. The complainant shall also be notified of his or her right to appeal this decision pursuant to this section. If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter.

(b) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days after the governing board issues the final district decision or permits the administrative determination to become final pursuant to subsection (a). Such appeals shall be processed pursuant to the provisions of Article 4 (commencing with Section 59350) of this subchapter.

(c) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing. In addition, in such cases, the complainant may file a petition for review with the Chancellor within thirty (30) days after the governing board issue the final district decision or permits the administrative determination to become final pursuant to subsection (a). The Chancellor shall have discretion to accept or reject any such petition for review in employment discrimination cases. If the Chancellor agrees to accept the case, he/she may:

(1) attempt to informally resolve the matter pursuant to Section 59354;

(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of Subchapter 1 (commencing with Section 53000) of Chapter 4 of this Division; or

(3) take any other action deemed appropriate by the Chancellor.

CCR tit. 5 § 59340: Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

(a) the original complaint;

(b) the report required pursuant to Section 59334 describing the nature and extent of the investigation conducted by the district;

(c) a copy of the notice sent to the complainant pursuant to Section 59336(b);

(d) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to Section 59338(a);

(e) a copy of the notice to the complainant required pursuant to Section 59338(a); and

(f) such other information as the Chancellor may require.